



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Fry Communications, Inc.

**File:** B-237666

**Date:** February 23, 1990

Kenneth B. Weckstein, Esq., Epstein Becker & Green, P.C.,  
for the protester.

Kerry L. Miller, Esq., Office of the General Counsel,  
Government Printing Office, for the agency.

Sabina K. Cooper, Esq., and Christine S. Melody, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

General Accounting Office will not review contracting  
agency's rejection of a bidder who failed to complete the  
solicitation's Certificate of Procurement Integrity or  
disturb the contract award since the requirement for the  
Certificate has been suspended.

### DECISION

Fry Communications, Inc., protests the rejection of its bid  
as nonresponsive and the award of a contract to Eric Hugo  
Printing under Government Printing Office (GPO) Program  
D339-S for the production of pamphlets known as Cancergrams.

We deny the protest.

The solicitation, issued September 21, 1989, was a sealed  
bid procurement for a 1-year requirements contract for film  
making, printing, packing and delivering of Cancergram  
pamphlets that disseminate new cancer research findings for  
the Department of Health and Human Services, National  
Institutes of Health. The solicitation incorporated the  
Certificate of Procurement Integrity clause, Federal  
Acquisition Regulation (FAR) § 52.203-8 as required by FAR  
§ 3.104-10. This clause implements 41 U.S.C.A. § 423(d)  
(West Supp. 1989), which essentially provides that an agency  
shall not award a contract unless a bidder or offeror  
certifies in writing that neither it nor its employees has  
any information concerning violations or possible violations

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of the OFPP Act pertaining to the procurement. The activities prohibited by the Act involve soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information. Under FAR § 52.203-8, bidders are required to list all violations or possible violations of the Act, or enter "none" if none exists, on the Procurement Integrity Certificate and sign the document.

The solicitation stated that it was the bidder's obligation to submit a signed Certificate of Procurement Integrity "with bid submission" for sealed bids or indefinite delivery-type contracts, and noted that the "failure of an offeror to submit the certification . . . will render the offeror ineligible for contract award." In addition, GPO had sent a mass mailing on July 18 to all prospective bidders, including Fry, advising them that the Procurement Integrity Certificate "must be submitted with your bid, or you will be declared ineligible for award." (Emphasis in original.)

GPO received 7 bids by the October 12 bid opening. After bid opening, GPO determined that the low bidder was nonresponsive. Fry, the second-low bidder at \$192,166.83, failed to submit a signed Certificate of Procurement Integrity with its bid, and was rejected as nonresponsive. GPO then awarded a contract to Eric Hugo, the third-low bidder at \$193,830, on October 26. Fry protested to our Office on November 2. GPO proceeded with contract performance notwithstanding the protest on November 28.

Fry argues that its failure to submit a signed Certificate of Procurement Integrity was a matter of responsibility, rather than responsiveness, or alternatively, a minor informality or mistake, that could have been cured after bid opening.

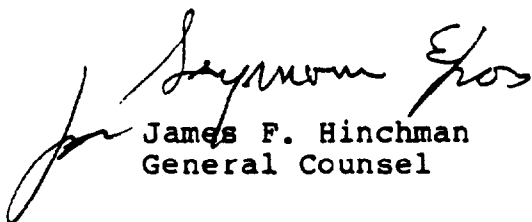
Effective December 1, 1989, 41 U.S.C.A. § 423(d), which contains the Certificate of Procurement Integrity requirements, was suspended by section 507 of the Ethics Reform Act of 1989, Pub. L. No. 101-194, 103 Stat. 1716, 1759 (1989), which provides that the procurement integrity legislation "shall have no force or effect during the period beginning on the day after the date of enactment of this Act and ending one year after such day." Recently, we denied a protest against the award of a contract to a bidder who failed to sign the Certificate at the time of bid opening, finding that in light of the suspension of the certification requirement, a bidder's failure to submit a signed Certificate with its bid was no longer material. Westmont Indus., B-237289, Jan. 5, 1990, 90-1 CPD ¶ \_\_\_\_\_. In contrast here,

GPO concluded that the certification requirement constituted a matter of responsiveness rather than responsibility, and therefore the completed Certificate had to be submitted with the bid; since Fry failed to do so, its bid was rejected as nonresponsive.

While the procurement integrity legislation was in effect, the contracting agencies were split on the issue of whether the certification requirement involved a matter of responsiveness or responsibility; for example, the Navy treated the requirement as a matter of responsibility in the Westmont case, while in this case GPO treated it as a matter of responsiveness. In our view, since completion of the Certificate bound the contractor to detect and report violations of the statute, an obligation not otherwise imposed by the the statute or regulations, the certification requirement could reasonably be interpreted as imposing a material legal obligation, and thus as a matter of responsiveness. Further, the FAR itself specified that a completed Certificate be submitted with the bid. FAR § 3.104-9(b)(2).

Under these circumstances, GPO acted reasonably in interpreting the certification requirement as a matter of responsiveness and rejecting Fry's bid for failing to include a completed Certificate. While the procurement integrity legislation subsequently was suspended, we do not think the suspension retroactively invalidated GPO's decision, which was reasonable at the time it was made, when the certification requirement was still in effect. Accordingly, we see no basis to disturb GPO's decision to reject Fry's bid and make award to Eric Hugo.

The protest is denied.

  
James F. Hinchman  
General Counsel